

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MARK ENGLAND and  
JULIANNA ENGLAND,

Plaintiffs,

vs.

LAS VEGAS METROPOLITAN  
POLICE DEPARTMENT, et al.,

Defendants.

2:07-CV-01238-PMP-GWF

**ORDER**

This action proceeded to trial before a jury on April 14 - 17, 2014. After two days of deliberations, interrupted by a weekend, the jury indicated that it was unable to reach a verdict on two of the three claims submitted. On March 21, 2014, the Court received the jury's verdict in favor of Defendant Officer Gary Clark on Plaintiff's state law claim of assault, and ordered a mistrial as to Plaintiff's state law claim for battery against Defendant Officer Gary Clark, and also on the Fourth Amendment claim against Defendant Officer Jason Jennings for use of excessive force. Currently, the case is scheduled for retrial on October 14, 2014, on Plaintiff's remaining two claims.

Now before the Court is Defendants' Renewed Motion for Judgment as a Matter of Law (Doc. #185) filed May 12, 2014. Defendants' renewed motion is filed pursuant to Rule 50(b) of the Federal Rule of Civil Procedure, and is fully briefed. Based upon the arguments presented on the briefs, and the evidentiary record developed during trial, the Court finds that Defendants' Renewed Motion (Doc. #185) should be granted in part and denied in part.

1 The Court is mindful of the deferential standard to be applied in evaluating motions  
2 for judgment as a matter of law under Rule 50(b). And the Court has previously applied  
3 a similar standard in this case. Nearly five years ago, on July 9, 2009, this Court granted  
4 summary judgment on behalf of Defendants and against Plaintiffs (Doc. #76). A timely  
5 appeal was taken by Plaintiffs, and nearly three years later, on March 30, 2012, the  
6 Judgment of this Court was reversed in part and remanded for trial on Plaintiffs' remaining  
7 claims. The case has now proceeded to a full jury trial. However, the fact that a jury was  
8 unable to come to unanimous agreement on two of the three claims presented, after a  
9 thorough three day trial and two days of deliberation, does not mean that another jury could  
10 not do so.

11 Defendants' renewed motion for judgment as a matter of law on Plaintiff's Fourth  
12 Amendment claim for excessive use of force against Defendant Officer Jason Jennings is  
13 not without force. However, under the guidance provided by the United States Court of  
14 Appeals for the Ninth Circuit in this case, the Court concludes that it cannot, as a matter  
15 of law, find that Defendant Jennings is entitled to qualified immunity.

16 The Court further finds, however, that the situation is different with respect to  
17 Plaintiff's remaining state law claim for battery against Defendant Officer Clark. On this  
18 claim, the jury was called upon to consider only whether the second and third tases applied  
19 to Plaintiff England by Defendant Officer Clark exceeded the amount of force justified  
20 under the circumstances. As noted in Defendants' renewed motion, the evidence adduced  
21 at trial, including the un-controverted testimony of Defendants' police practices expert Jack  
22 Ryan, strongly demonstrates that Plaintiff England failed to provide the jury with any  
23 legally sufficient evidentiary basis to find in his favor on the battery claim against  
24 Defendant Officer Clark. Based upon the full evidentiary record developed at trial, the  
25 Court finds there remain no factual discrepancies which, if resolved in Plaintiff England's  
26 favor, would compel a contrary result. The Court, therefore, finds that Defendant Officer  
27 Clark is entitled to judgment as a matter of law on Plaintiff's battery claim.

28 **IT IS THEREFORE ORDERED** that Defendants' Renewed Motion for Judgment  
as a Matter of Law (Doc. #185) is DENIED as to Plaintiff's Fourth Amendment claim

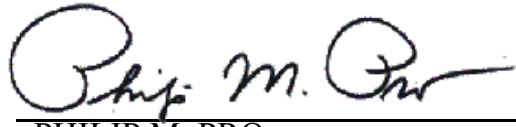
1 against Defendant Officer Jennings for excessive use of force.

2 **IT IS FURTHER ORDERED** that Defendants' Renewed Motion for Judgment as  
3 a Matter of Law (Doc. #185) is GRANTED as to Plaintiff's battery claim against  
4 Defendant Officer Gary Clark.

5 **IT IS FURTHER ORDERED** that trial currently scheduled for October 14, 2014  
6 shall proceed only as to Plaintiff England's remaining Fourth Amendment claim for  
7 excessive use of force as to Defendant Officer Jason Jennings.

8 **IT IS FURTHER ORDERED** that the Clerk of Court shall forthwith enter  
9 Judgment in favor of Defendant Gary Clark on Plaintiff Mark England's claim of battery.

10 DATED: June 25, 2014.

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13 PHILIP M. PRO  
14 United States District Judge  
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